

Agency Name	DHHS
Audit Name	FOOD PROTECTION SECTION PERFORMANCE AUDIT
Audit Period	State FY 13 and FY 14
Status Report Date	01/2020

Summary of Audit Observations/Findings					
Number	Observation Title	Status [place X in status column]			
		Unresolved	Partially Resolved	Substantially Resolved	Fully Resolved
1	Improve Effectiveness				X
2	Expand Scope of Operation to Reflect Statutory Obligations				X
3	Improve Statutory Construct			X	
4	Improve Accreditation Practices				X
5	Improve Management of the Food Service Establishment Plan Review Process				X
6	Improve Variance Management			X	
7	Improve Inspection Practices				X
8	Improve Management of the Food Sanitation subprogram				X
9	Register out-of-state non-commercial producers				X
10	Improve Management of Cold Storage Establishments				X
11	Improve Oversight of Self-Inspecting Town Food Safety Programs				X
12	Improve Management of the Dairy Sanitation Subprogram				X
13	Simplify Dairy Regulatory Structure				X
14	Improve Management of Shellfish Sanitation Subprogram				X
15	Improve Management of the Beverage and Bottled Water Subprogram			X	
16	Reinstitute Statutorily-required Systemic Sampling of Food Articles	X			
17	Improve Complaint Management				X

18	Improve Sanctions Management				x
19	Improve Compliance With Food Safety Statutes				x
20	Improve Compliance with the Administrative Procedures Act			x	
21	Formally Delegate Authority				x
22	Improve Rules				x
23	Improve Fiscal Management				x
24	Improve Performance Management and Information and Records Management				x
25	Improve Communication with the Public				x
26	Improve Risk Management				x
27	Improve Organizational Efficiency and Effectiveness				x
28	Improve Information Technology Controls				x
29	Improve Policies and Procedures			x	

EXAMPLE Observation 1: No Formal Risk Assessment over XYZ program

Summary of Finding: Agency has not performed a formal risk assessment. An effective assessment is the foundation for developing and implementing effective internal controls to eliminate, mitigate or otherwise manage identified risks.

Current Status: Substantially Resolved. Agency in connections with DAS, utilized the Internal Control Toolkit and performed a formal risk assessment. The next step is to implement new processes and controls to minimize the identified risks. Completion Date estimated: August 2019

Observation 1: Improve Effectiveness

Summary of Finding: Recommendation: Food Protection Section (FPS) management review policies, procedures, practices, and its role in helping ensure a safe public food supply and reducing the occurrence of impure foods, unsanitary establishments, and risky practices statewide; coordinate with other State agencies and self-inspecting jurisdictions to develop a reporting system; centralize reporting of all food safety complaints, illness and outbreak data, sampling results, and noncompliant establishment data; analyze performance measures; and develop and publicize a time-phased strategic plan for improving effectiveness.

Current Status: Fully Resolved. The program's policies, procedures and practices have been reviewed and re-aligned for consistency. A new database referred to as the Food Protection Licensing and Inspection System (FPSLIIS) has been developed and implemented that integrates inspections and licensing data, allowing the program staff the capability to review program metrics. A procedure is already in place for the self-inspecting cities and towns to report consumer complaints and illness and outbreak data to the Division of Public Health Services (DPHS).. The FPS developed a 3-year strategic plan in 2017.

Observation 2: Expand Scope of Operation to Reflect Statutory Obligations

Summary of Finding: Recommendation: FPS management expand its scope of operation to reflect the full extent of its statutory obligations.

Current Status: Fully Resolved. State legislation (SB 221, *relative to food safety*), incorporating recommendations from the final report of the Health and Human Services Oversight Subcommittee (HHSOS), was passed in June of 2017. The legislation included several changes that reflect the recommendations that the HHSOS provided to DPHS regarding the LBA audit observations and the current State laws. These changes include:

- Clarification in RSA 143-A:5, *Exemptions*, that the phrase "exempt from licensing" also means that a food establishment is "exempt from inspection." This change is also included in RSAs 143-A:12, pertaining to homestead foods, RSA 143-A:15 and 16, pertaining to poultry and rabbits and RSA 143-A:5, for certain food establishments (such as summer camps) listed as exempt from DHHS/FPS licensing because they are licensed and inspected by another agency);

- Strengthened language to reinforce the option to inspect in situations where an imminent health hazard is suspected;
- Submitted clarifying language to RSA 143-A:2, *Purpose*, to associate how the state has discretion to direct inspection resources based on need and risk levels;
- One of the HHSOS recommendations to expand the scope of work was to revise RSA143-A:5, III to add permit/licensing requirement for large-scale temporary and occasional food service establishments. Due to limited program resources, this was put on hold by FPS pending the addition of more food inspectors. SB 221 clarified that temporary events are not required to be licensed or inspected.
- Repealed RSA 130:2, *Inspection of Meat*. Though it was not cited in the LBA audit of FPS, there is general agreement that this provision should be repealed because the Department does not have a meat inspection program. The responsibility of meat inspection is held at the federal level through the United States Department of Agriculture (USDA). USDA inspects the production of meat before it is allowed into commerce for retail sale. FPS does check temperature and sanitary conditions of meat at retail locations during inspections as part of our existing authority to inspect food establishments for food safety.
- The HHSOS report recommended that DHHS hire four additional full-time inspectors to achieve a capacity that is more protective of public health based on the FDA risk-based inspection frequency guidelines. This request was included in the SFY 18/19 biennial budget process, however it did not make it through to the final approved budget. Funding for 2 part-time positions was included in the approved SFY 18/19 budget and the 2 new part-time food inspector positions were created and filled. A request for two additional full time inspectors was included in the SFY 20/21 biennial budget process, however it did not make it through to the proposed budget. Based on current staff resources, inspections continue to be conducted on a risk based frequency. Two new food inspector positions were recently approved. Once the new positions are posted and filled, these additional food inspectors will be used to increase food establishment inspection frequency.

Observation 3: Improve Statutory Construct

Summary of Finding: Recommendation: The Legislature consider repealing six chapters of statute and replace them with a comprehensive food safety statute. The Commissioner consolidate and standardize common elements of rules such as administrative fines, accreditation procedures and fees.

Current Status: Substantially Resolved. A complete report from the HHSOS was made available in May of 2016. This report was used to develop legislation to address various HHSOS recommendations including amendments to RSA 143, *Sanitary Production and Distribution of Food*, Revisions to RSA 143, through state legislation (SB 221), was passed in June of 2017. In addition, revisions to RSA 184, *Milk and Milk Products*, based on the recommendations included in the HHSOS report, were passed in 2018. A standing recommendation from the HHSOS report was to study RSA 146, *Purity and Branding of foods and Drugs; Immature Veal*. To date, no legislative initiatives have been undertaken to revise RSA 146.

Observation 4: Improve Accreditation Practices

Summary of Finding: Recommendation: The Commissioner seek changes to the statute to standardize and simplify the accreditation structure, migrate applicable licensing cycles to a biennial schedule and promulgate changes to the FPS rule. FPS management adopt policies and procedures to ensure accreditations are not issued improperly and licensing inspections occur as required.

Current Status: Fully Resolved. To address training, a workgroup of four food inspectors including the supervisor developed a Standard Operating Procedure (SOP) to train new inspectors and current inspectors which addresses standardization practices, continuing education and co-inspections. This SOP was completed in June 2018.

The accreditation structure has been simplified due to implementation of the new Food Protection Licensing and Inspection System (FPSLIIS). This also allows FPS to have greater oversight to ensure accreditations are not improperly issued.

As stated in the final audit the report, FPS did not agree to a 2 year accreditation cycle, only to study the feasibility. FPS did study biennial licensing and surveyed other states on the topic and elected not to implement a 2 year accreditation cycle for licensing of food establishments due to costs to licensees and turnover of establishments.

Observation 5: Improve Management of the Food Service Establishment Plan Review Process

Summary of Finding: Recommendation: FPS management require applicants to submit a plan review application including required documentation, review the number of copies of documentation required to be submitted, improve management oversight and decentralize the plan review process.

Current Status: Fully Resolved. The requirement that applicants submit a plan review application was implemented immediately and will be included the FPS's Standard Operating Procedures (SOP) manual. As stated in the final audit the report, FPS did not agree to decentralizing the plan review but to study the feasibility. Due to the significant amount of resources required to train all staff to be standardized to conduct plan reviews, the FPS has elected not to decentralize the plan review process.

Observation 6: Improve Variance Management

Summary of Finding: Recommendation: The Commissioner promulgate rules for granting and processing variances to ensure licensees have consistent access to variances. The FPS management develop written policies for managing variances, ensure variances granted to grandfathered establishments are recorded, ensure performance information is recorded, and timeliness and other performance goals are achieved.

Current status: Substantially Resolved. A SOP for approval has been addressed as part of the procedure manual for the new licensing and inspection database. Rulemaking for all food protection programs to ensure variance requirements are uniform has been addressed with the exception of one rule, He-P 2700,

Milk Producers, Plants, Producer/Distributors, which will be addressed in rulemaking initiated in March 2020.

Observation 7: Improve Inspection Practices

Summary of Finding: Recommendation: The Commissioner amend rules to include detailed inspection practices as required by statute. FPS management develop and implement a risk-based inspection scheduling system focused on high-risk establishments, develop a quality assurance program, incorporate the distribution phase of the food production cycle into the scope of inspection practices, ensure repeat risks are addressed in inspections, and ensure establishments are regulated uniformly.

Current Status: Fully Resolved. The FPS has also placed a training component in an upcoming contract to support further development of this area (including on-line aspects), with the long-term goal of making this available to other local level food inspectors and the regulated industry.

FPS has developed a risk-based inspection matrix for food establishments and has integrated it into the new Food Protection Licensing and Inspection System (FPSLIIS). The inspection matrix has also been included as part of the program's SOP. The DPHS supports expanding inspections to highest risk temporary venues not presently covered in the matrix. This expansion is contingent upon adding FPS staff (2 FTEs) to cover the increase in program workload. The FPS has procured a training component in a SFY 20/21 contract.

Observation 8: Improve Management of the Food Sanitation subprogram

Summary of Finding: Recommendation: FPS management ensure unlicensed establishments are systemically inspected based on risk, incentivize violation corrections, ensure Hazard Analysis and Critical Control Point (HACCP) plans are checked, require assignment of risk categories, formalize policy and procedure, and improve violation tracking and resolution.

Current Status: Fully Resolved. Implementation of the new Food Protection Licensing and Inspection System (FPSLIIS) provides data that supports the development and tracking of metrics relative to inspection frequency, violation corrections, HACCP plan review and risk assignment. Legislation passed in 2017 clarified inspection duties relative to unlicensed establishments.

Observation 9: Register Out-of-State Non-commercial Producers.

Summary of Finding: Recommendation: FPS management comply with rules, annually reregister out-of-State non-commercial producers and ensure out-of-State non-commercial producers are aware of registration requirements.

Current Status: Fully Resolved. Revisions to RSA 143:29 to achieve parity between in-state and out-of-state exempt producers, passed in June 2017. These revisions removed the requirement for out-of-State non-commercial producers to register.

Observation 10: Improve Management of Cold Storage Establishments

Summary of Finding: Recommendation: The Commissioner promulgate rules regulating cold storage establishments and consider seeking statutory changes to simplify their regulation. FPS management annually inspect each cold Storage establishment.

Current Status: Fully Resolved. In 2017, RSA 145, *Cold Storage*, was repealed as part of SB 221 and the requirements for cold storage establishments have been incorporated into RSA 143, *Sanitary Production and Distribution of Food*, and HeP 2300, *The New Hampshire Rules for the Sanitary Production and Distribution of Food*. Cold Storage facilities are now inspected on a risk based frequency similar to other regulated food establishments.

Observation 11: Improve Oversight of Self-Inspecting Town Food Safety Programs

Summary of Finding: Recommendation: The Commissioner formally delegate authority to the FPS administrator. FPS management standardize and update Memoranda of Agreement (MOA), ensure self-inspecting towns comply with relevant State laws and MOAs, require all complaints and their resolution be provided timely, assess training needs and develop a training program, document transactions, develop performance measures, collect data, and regularly evaluate local program effectiveness and compliance.

Current Status: Fully Resolved. This area relates to the recommendation to add more inspectors to support redistribution of inspection load currently carried by the FPS inspector supervisor. With the addition of two part-time inspectors, FPS plans to increase oversight of the five self-inspecting towns. Increased oversight would include review of the town's inspection and complaint resolution trends, as well as assuring that the required reporting to the state program (as per the MOU) is consistent. Additional focus on training of local food inspectors will also be increased as the FPS develops its own training protocol and on-line access. The FPS continues to facilitate quarterly meetings with the self-inspecting cities and towns as well as federal partners such as the FDA for the purpose of sharing information, coordination and education on new policies and best practices.

Due to update to He-P 2300, The Rules for the Sanitary Production and Distribution of Food, FPS is working to update the 5 MOAs to reflect this change. This is to be completed by April 2020. As FPS food inspector vacancies are filled (1 part-time and 2 full-time inspectors), the supervisor will have capacity for enhanced oversight of the self-inspecting jurisdictions. This is to occur by June 2020.

Observation 12: Improve Management of the Dairy Sanitation Subprogram

Summary of Finding: Recommendation: The Legislature consider updating and amending the statute to transfer elements of the dairy industry regulation under the Department of Agriculture, Markets, and Food (DAMF) to the Department of Health and Human Services (DHHS) and consider updating fees to reflect actual administrative cost. The Commissioner should promulgate or revise rules for inspecting milk distributors and accrediting transfer stations. FPS management should inspect all licensed and permitted establishments, consider redefining the sanctions for non-critical violations, accredit transfer stations, seek a formal agreement with the DAMF for shared regulatory responsibilities over bulk milk tankers and bulk milk haulers and samplers, and formalize policy and procedures for interacting with Bulk Tank Units.

Current Status: Fully Resolved. RSA 184 was updated in 2018 to transfer the shared regulatory authority between the DAMF and the DHHS/FPS to the DHHS. The Legislature did not update the bulk hauler or milk route fees at this time. The dairy rules have been updated to reflect the recommendations regarding inspections of milk distributors and accrediting stations, and adding fines to be consistent with other programs.

Observation 13: Simplify Dairy Regulatory Structure

Summary of Finding: Recommendation: The Legislature consider disestablishing the Milk Sanitation Board and transferring any unique responsibilities to the DHHS. The Milk Sanitation Board, should it continue, amend rules to comply with statute and disestablish the Dairy Practices Committee (Committee). Should the Committee continue, no longer include FPS inspectors on the Committee.

Current Status: Fully Resolved. The HHSOS made the recommendation in its final report to not disestablish the Milk Sanitation Board or the Dairy Practice Committee.

Observation 14: Improve Management of Shellfish Sanitation Subprogram

Summary of Finding: Recommendation: FPS management timely comply with corrective action plans, require establishments to develop HACCP plans, create a contingency plan, increase management oversight and improve control of enforcement activities.

Current Status Fully Resolved. Staff and the regulated industry were advised by the FPS management that Hazard Analysis and Critical Control Plans (HACCP) plans are to be developed by shellfish establishments. As of June 2019, two FPS staff members are now trained to conduct shellfish inspections. The program reorganized supervision in 2018 to increase management oversight.

Observation 15: Improve Management of the Beverage and Bottled Water Subprogram

Summary of Finding: Recommendation: The Commissioner amend rules to establish a risk-based inspection frequency. FPS management should ensure annual inspections for each in-State beverage and bottled water establishment are completed, conduct a risk analysis to establish the needed inspection frequency, process applications for licensure and registration according to rule, improve oversight of license and registration processing and enforce sanctions.

Current Status: Substantially Resolved. Variance process and sanction structure were aligned with other program rules which became effective in 2018. The FPSLIIS has assisted in efficiently processing applications for licensure and registration. Inspection frequency will be addressed once the FPS inspection staff as staff member hired in October 2019 will be trained by June 2020.

Observation 16: Reinstitute Statutorily-required Systemic Sampling of Food Articles

Summary of Finding: Recommendation: FPS management reinstitute food sampling as required by statute, develop comprehensive risk based policies and procedures, and collect and analyze sampling results.

Current Status: Unresolved. HHSOS supports continued and expanded testing (if resources are available). However, due to existing limitations on resource levels within the Public Health Lab and the FPS, the DPHS does not currently have the ability to maintain routine inspection work along with required sampling. If requests to increase staff are approved in future years, the program will explore food sampling as a complement to the existing inspection program.

Observation 17: Improve Complaint Management

Summary of Finding: Recommendation: FPS management improve complaint management processes, guidelines, and requirements.

Current Status: Fully Resolved. Standard Operating Procedures have been updated for the Complaint Procedures. These updates include the integration (entry and tracking) of complaints into the new Food Protection Licensing and Inspection System (FPSLIIS).

Observation 18: Improve Sanctions Management

Summary of Finding: Recommendation: The Commissioner seek statutory changes to the sanctions regime and amend rules to establish a graduated sanctions regime. FPS management should use specified sanctions when required by statute and rule, and improve management oversight of noncompliance and sanctions.

Current Status: Fully Resolved. The HHSOS recommended revising fine structures to more realistically include lower penalties for types of fines that are minor in nature and do not pose any significant health risks and adding an “up to” maximum amount. Reports are generated using the FPSLIIS indicating when an establishment is due for a fine to due repeat violations. The FPS part-time legal assistant now monitors when establishments are eligible for fines.

Using the FPSLIIS, the FPS inspection staff also can track repeat violations and effective follow up when a corrective action plan is used to gain compliance versus an administrative fine.

Observation 19: Improve Compliance With Food Safety Statutes

Summary of Finding: Recommendation: The Commissioner revise rules to comply with food safety laws. FPS management should develop policies and procedures to ensure inspections are completed as required in statute.

Current Status: Fully Resolved. SB 221, which was passed in 2017, included clarifications related to the following areas: the scope of the DPHS FPS inspection responsibility, legislative intent when creating exemptions, other agencies that have licensing and inspection oversight over venues that serve food, and clarifications that the DPHS FPS will retain authority to inspect any venue if the Department has reason to suspect an imminent health hazard. The amendments also included language regarding the Department having authority to determine the focus and frequency of inspections (including second inspections related to a ‘provisional’ license) and using a risk-based approach in consideration of available resources for prioritization of inspections. Further, the amendments de-coupled the requirement that fees cover

program costs for the dairy component of food protection and also eliminated the requirement that a \$100 fee be charged for food establishment inspections.

Observation 20: Improve Compliance with the Administrative Procedures Act

Summary of Finding: Recommendation: The Commissioner promulgate comprehensive rules. FPS management should develop policies and procedures to ensure timely responses to applications and complaints.

Current Status: Substantially Resolved. Administrative rules have been updated to address the informal requirements contained in applications and policy declarations. Rules have not been promulgated for RSA 146, *Purity and Branding of Food and Drugs; Immature Veal*. The review of this statute is a standing recommendation from the HHSOS report. We will explore potential legislation to form a legislative study committee to do a formal review of this statute.

Observation 21: Formally Delegate Authority

Summary of Finding: Recommendation: The Commissioner formally delegate authority.

Current Status: Fully Resolved. The DHHS Commissioner signed a Delegation of Authority to the FPS Administrator in a letter dated October 2015.

Observation 22: Improve Rules

Summary of Finding: Recommendation: The Commissioner amend food safety-related rules.

Current Status: Fully Resolved. The FPS engaged in a required review of all program rules as a response to the Governor's letter dated January 5, 2017. Updates and revisions to the rules have been noted in the prior Observations (6,10,12,15,20).

Observation 23: Improve Fiscal Management

Summary of Finding: Recommendation: The Commissioner analyze program costs, ensure subprogram revenue neutrality, expend dedicated funds on subprogram expenses, ensure fund balances brought forward are not general funds, amend rules, and balance accreditation revenues with inspection revenues. FPS management should charge inspection fees, undertake subprogram revenue and cost accounting and comply with applicable rules.

Current Status: Fully Resolved. Timekeeping for staff that work in multiple programs is now being done using the state's time management system and also recorded in the FPSLIIS.

The HHSOS recommended changing RSA 143-A:6, *Administration and Rulemaking*, to reflect the practice of not-charging for inspections, as this is more pragmatic and common practice. This was included in SB 221, which was passed in 2017. The HHSOS also recommended changing RSA 184:85, *Licenses; Fees*, to **not** require the State's program costs for licensing, inspecting and regulation of the

dairy industry to be cost neutral due to the economic concerns of this industry. This change was also included in the SB 221 legislation that passed in 2017.

Observation 24: Improve Performance Management and Information and Records Management

Summary of Finding: Recommendation: FPS management develop organizational goals, objectives, and sub-objectives; establish specific and measurable organizational and individual performance levels; collect and routinely analyze relevant data; assess whether measurable improvements in food safety are being achieved; develop, implement, and enforce a formal records management policy; integrate and simplify information management systems; and improve the completeness, accuracy, and validity of records and data.

Current Status: Fully Resolved. Tracking of metrics for oversight and quality improvement is a value-added component of the new Food Protection Licensing and Inspection Information System (FPSLIIS). Management currently uses the system to establish metrics to develop schedules for past due routine inspections, follow up inspections, complaint inspections and licensing inspections. Data and metrics are also reviewed to assign work districts and to assess training needs.

Metrics have also been developed related to risk-based inspections and consistency of fines.

Observation 25: Improve Communication with the Public

Summary of Finding: Recommendation: FPS management communicate public health risks identified during inspections, publicize program outcomes, and regularly obtain industry and customer feedback.

Current Status: Fully Resolved. Inspection results have been posted online starting in the Fall of 2017. Inspection results are available at <https://www.dhhs.nh.gov/dphs/fp/inspection.htm> FPS started using social media in April of 2017 as part of a DPHS initiative to communicate food safety messages to the public. As inspection reports are now emailed, this provides an easier and more efficient way for the food industry to contact FPS if they have any questions or concerns regarding an inspection. FPS is looking to implement a formal customer feedback procedure by June 2020.

Observation 26: Improve Risk Management

Summary of Finding: Recommendation: FPS management conduct an entity-wide risk assessment and develop a strategic plan.

Current Status: Fully Resolved. FPS completed its Strategic Plan in August of 2016. Risks associated with resources due to lack of program staff, and staff vacancies are communicated to DHHS leadership by FPS management. This has resulted in creation of two new part-time and two new full time food inspectors to address program resources.

Observation 27: Improve Organizational Efficiency and Effectiveness

Summary of Finding: Recommendation: The Commissioner facilitate improved efficiency by coordinating routine FPS field staff use of the DHHS District Offices. FPS management should increase inspector output by improving human resource management, simplify practices, seek to increase the FPS fleet size, ensure employees comply with their Supplemental Job Descriptions (SJD), review and amend SJDs, add performance measures and quality improvement mechanisms to SJDs, ensure SJDs have responsibilities compatible with the corresponding job classifications and create succession plans for key roles.

Current Status: Fully Resolved. To improve efficiency, staff meetings have been reduced by 25% (from one per month to every one-two months depending on need for staff to participate in training). All FPS SJDs have been updated and submitted to HR as of November 2015. Additional state cars were procured for staff in 2016 who were deemed to exceed the break-even threshold for mileage.

Observation 28: Improve Information Technology Controls

Summary of Finding: Recommendation: FPS management improve information technology controls, improve systems designs, and reduce field staff data entry requirements.

Current Status: Fully Resolved. This has been addressed with the development and implementation of the Food Protection Licensing and Inspection Information System (FPSLIIS). This new database went live with all functionality in October 2017.

Observation 29: Improve Policies and Procedures

Summary of Finding: Recommendation: FPS management develop written policies and procedures detailing practices and ensure staff have a common understanding of the ethics policy.

Current Status: Substantially Resolved. A Standard Operating Procedure (SOP) has been developed for training of new inspectors and current staff. SOPs have been updated for two practice areas: embargo and vehicle inspection. As staff become more familiar with new licensing and inspection system, administrative procedures surrounding the application processes new and renewing establishments are being evaluated and updated. . Scheduled completion for these administrative SOPs is March 2020.

The state ethics and Conflict of Interest Policy was reviewed with all staff in 2015.